

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

Frederick Lawson

Case No. 11-80414

Chapter 13

Social Security No. xxx-xx-3773

Address: 508 Chadbourne Drive, Durham, 27703-

Debtor

OBJECTION TO CLAIM

NOW COMES the Debtor above-named, through counsel, pursuant to 11 U.S.C. §502 and Bankruptcy Rule 3007, who respectfully objects to the proof of claim filed by the creditor AMERICAN HOME MORTGAGE SERVICING, INC. (Hereinafter referred to as “AHM”) and dated May 27, 2011, for the following reasons:

1. The Debtor believes the “pre-petition” arrearage claim in the amount of \$18,029.31 is overstated.
2. As detailed below, the Debtor believes the correct amount is \$10,938.07.
3. The Debtor filed a previous Chapter 13 case, No. 08-80350, on March 7, 2008, which was confirmed on June 16, 2008, and subsequently dismissed on February 14, 2011.
4. During the course of the first Chapter 13 plan, the mortgage currently serviced by AHM was originally serviced by Option One Mortgage, and was, following notice from AHM or its predecessor, subject to the following changes in the on-going payment:

Date	Description	Effective Date	Amount
June 16, 2008	Confirmation Order	July 1, 2008	\$1,278.33
December 8, 2008	Motion & Order	July 1, 2008	\$1,205.29
February 4, 2009	Motion & Order	December 1, 2008	\$1,195.38
July 6, 2009	Motion & Order	June 1, 2009	\$1,118.16
January 13, 2010	Motion & Order	November 1, 2009	\$1,096.01
January 14, 2010	Motion & Order	December 1, 2009	\$1,022.18
June 9, 2010	Motion & Order	June 1, 2010	\$1,000.84
November 16, 2010	Motion & Order	November 1, 2010	\$955.26

5. The following table, upon information and belief, shows the on-going payments as ordered ad the amounts disbursed by the Chapter 13 Trustee. (The disbursements were made on the last day of the preceding month.)

Date	Ordered On-going	Paid	Difference
July 1, 2008	\$1,205.29	(\$1,196.99)	\$8.30
POC/M&O			
August 1, 2008	\$1,205.29	(\$1,213.59)	(\$8.30)
September 1, 2009	\$1,205.29	(\$1,205.29)	\$0.00
October 1, 2008	\$1,205.29	(\$1,205.29)	\$0.00
November 1, 2008	\$1,205.29	(\$1,205.29)	\$0.00
December 1, 2008	\$1,195.38	(\$1,205.29)	(\$9.91)
POC/M&O			
January 1, 2009	\$1,195.38	(\$1,195.38)	\$0.00
February 1, 2009	\$1,195.38	(\$1,195.38)	\$0.00
March 1, 2009	\$1,195.38	(\$1,195.38)	\$0.00
April 1, 2009	\$1,195.38	\$0.00	\$1,195.38
May 1, 2009	\$1,195.38	(\$2,390.76)	(\$1,195.38)
June 1, 2009	\$1,118.16	(\$1,118.16)	\$0.00
M&O			
July 1, 2009	\$1,118.16	\$0.00	\$1,118.16
August 1, 2009	\$1,118.16	(\$1,384.19)	(\$266.03)
September 1, 2009	\$1,118.16	(\$1,376.26)	(\$258.10)
October 1, 2009	\$1,118.16	(\$1,376.43)	(\$258.27)
November 1, 2009	\$1,096.01	(\$1,376.97)	(\$280.96)
M&O			
December 1, 2009	\$1,022.18	\$0.00	\$1,022.18
M&O			
January 1, 2010	\$1,022.18	(\$642.65)	\$379.53

February 1, 2010	\$1,022.18	\$0.00	\$1,022.18
March 1, 2010	\$1,022.18	(\$1,337.54)	(\$315.36)
April 1, 2010	\$1,022.18	(\$1,464.70)	(\$442.52)
May 1, 2010	\$1,022.18	\$0.00	\$1,022.18
June 1, 2010	\$1,000.84	(\$1,333.07)	(\$332.23)
M&O			
July 1, 2010	\$1,000.84	\$0.00	\$1,000.84
August 1, 2010	\$1,000.84	(\$630.11)	\$370.73
September 1, 2010	\$1,000.84	(\$1,296.67)	(\$295.83)
October 1, 2010	\$1,000.84	(\$1,110.83)	(\$109.99)
November 1, 2010	\$955.29	\$0.00	\$955.29
M&O			
December 1, 2010	\$955.29	(\$1,127.88)	(\$172.59)
January 1, 2011	\$955.29	(\$1,129.28)	(\$173.99)
February 1, 2011	\$955.29	\$0.00	\$955.29
March 1, 2011	\$955.29	(\$22.09)	\$933.20
Total Post-Petition Arrearage:			\$1,541.91

6. The Proof of Claim filed by Option One Mortgage in the previous case asserted an pre-petition arrearage claim of \$9,542.86, including payments due as of June 1, 2008.
7. During the course of the previous Chapter 13 plan, the Trustee disbursed \$3,788.62 on this claim, leaving a balance of \$5,575.00.
8. The Debtor believes the on-going mortgage claim in the amount of \$1,017.80 is overstated.
9. The last on-going monthly payment amount ordered by the bankruptcy court on November 16, 2010, was \$955.29.
10. Upon information and belief, the Debtor has not received any notice of a further on-going monthly payment change.
11. Accordingly, the amounts due to AHM for April, May, June and July of 2011, should be \$3,821.16.

12. That, upon information and belief, during the pendency of the previous case, neither the Trustee, the Debtor, nor the Debtor's attorney, received any notices of the assessment of fees, including, without limitation, late fees, attorneys' fees, property inspection fees, etc., in violation of N.C.G.S. § 45-91.
13. That, upon information and belief, during the pendency of the previous case, AHM did not apply to the bankruptcy court for the allowance of additional of fees and costs of collection, including, without limitation, late fees, attorneys' fees, property inspection fees, etc., in violation of Paragraph 27d of the Confirmation Order.
14. That accordingly, the on-going monthly payment should be, upon information and belief, \$955.29.
15. That accordingly, the pre-petition arrearage in the present case should be \$8,938.07, consisting of the following:
 - a. The \$3,575.00 balance on the arrearage claim from the first case;
 - b. The \$1,541.91 post-petition arrearage from during the first case; and
 - c. The \$3,821.16 arrearage for April through July 2011.
16. Because the Debtor contest the amount of the pre-petition arrearage claimed by said creditor in its Proof of Claim filed in this case, pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 9014 of the Federal Rules of Bankruptcy Procedure, the Debtor is, by separate document attached herewith, requesting production from said creditor of a payment history and related information.

WHEREFORE, the Debtor prays that the Court enter an Order reducing the pre-petition arrearage claim to the sum of \$8,938.07 and setting the on-going payment to be \$955.29. Furthermore, in the event that said creditor contests this objection by filing a formal response thereto, the Debtor requests that, until such time as the aforementioned payment history is provided, the Court treat any hearing upon this Objection as preliminary, in accordance with the power vested in this Court pursuant to 11 U.S.C. 105(a).

Dated: July 6, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward C. Boltz
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Debtor

CERTIFICATE OF SERVICE

I, Renee Nolte, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on July 6, 2011. I served copies of the foregoing **OBJECTION TO CLAIM** electronically or, when unable, by regular first-class U.S. mail, addressed to the following parties:

AMERICAN HOME MORTGAGE SERVICING, INC.

Attn: Managing Agent

1525 South Beltline Rd.

Suite 100N

Coppell, TX 75019-

Kimberly A. Sheek

Attorney for AMERICAN HOME MORTGAGE SERVICING, INC.

10130 Perimeter Parkway

Suite 400

Charlotte, NC 28216-

U.S. Bankruptcy Administrator

Richard M. Hutson, II

Chapter 13 Trustee

/s Renee Nolte

Renee Nolte